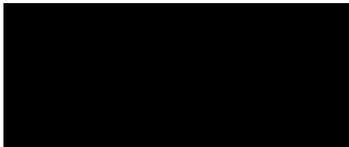


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: SRC-02-083-51103

Office: TEXAS SERVICE CENTER

Date: MAY 13 2003

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a *paso fino* horse farm with two employees and a gross annual income of \$309,292. It seeks to employ the beneficiary as a professional *paso fino* horse trainer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires a baccalaureate degree in a specific specialty. On appeal, counsel states, in part, that the record contains expert opinions to demonstrate that the proffered position qualifies as a specialty occupation. Counsel further states that although no institution of higher education offers a baccalaureate degree in *paso fino* horse training, the proposed duties are so specialized and complex that the equivalent of a baccalaureate degree is required industry wide.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Will teach training methods and techniques to Paso Fino Farm personnel. Will instruct and demonstrate principals, techniques, and methods to regulate hand and body movements to have Paso Fino Horses respond to oral, spur and rein commands to obtain the rhythmic syncopated special gait peculiar to only the Paso Fino Horse breed. Will demonstrate and teach the different Paso Fino stallions and mares bloodlines (Puerto Rico, Colombia, USA, Venezuela, and Dominican Republic bloodlines), in order to procure the best breed as a result of the mating of said animals. Will prepare educational presentations to trainees and farm clients during animal performances. Will review educational materials and bloodlines to gather information for presentations and teaching. Will observe trainees during practice to detect and correct mistakes. Will instruct techniques for performing in Paso Fino Horse Show Competition in accordance to prescribed standards. Will teach methods and routines of horse show

competition and methods used for scoring Paso Fino riders during shows. Assists owners in preparing brochures and videos containing information of the national and international Paso Fino Horse breed, performance, show rules, and proper handling during competitions

The record contains the following:

- Letter dated March 28, 2002 from the vice president of the *Paso Fino* Horse Association, Inc., who states, in part, that it takes years of specialized training and experience to become a *paso fino* horse trainer;
- Letter dated March 15, 2002, from a vocational evaluator and consultant, who assigns the proffered position a Specific Vocational Preparation (SVP) level of seven;
- Letter from a veterinarian dated April 1, 2002, who states, in part, that the duties of a *paso fino* horse trainer are so specialized and complex that the knowledge required to perform such duties is associated with the attainment of a baccalaureate degree or an equivalent thereof;
- An undated evaluation from an industry expert in the *paso fino* horse breed who states, in part, that a professional *paso fino* horse trainer requires at least 12 years of work experience and/or training, and, therefore such position qualifies as a professional position.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require the equivalent of a bachelor's degree in *paso fino* horse training. The vocational evaluator and consultant asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general

information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

The proffered position is that of a *paso fino* horse trainer. A review of the DOL's *Handbook*, 2002-2003 edition, at page 325, finds that although some animal trainers, such as a marine mammal trainer, may require a bachelor's degree, most animal care and service workers are trained on the job. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although counsel asserts that the petitioner normally requires a baccalaureate degree or an equivalent thereof for its *paso fino* horse trainer positions, the record does not contain any documentary evidence in support of such assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Although the vice president of the *Paso Fino* Horse Association, Inc. states that it takes years of specialized training and experience to become a *paso fino* horse trainer, the Bureau cannot assume that such specialized training and experience are equivalent to a baccalaureate degree. Counsel has provided letters from two industry experts who state, in part, that the usual requirement for positions such as the proffered position is the equivalent of a baccalaureate degree in *paso fino* horse training. Such letters, however, are insufficient evidence of an industry standard, as the writers have not provided evidence in support of their assertions. *Matter of Treasure Craft of California, id.*

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that

the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.